REMARKS

Claims 1-15, 23-30, 32-59 and 67-68 remain pending in the application. The Office Action Summary page incorrectly lists claims 23-30 and 32-42 as rejected. The correct status of claims 23-30 and 32-42 is "allowed." Reconsideration is respectfully requested in light of the following remarks.

Section 101 Rejection:

The Examiner rejected claims 1-15, 43-59 and 67-68 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully traverse this rejection for the reasons given in Applicants' previous response and for the reasons given below.

Claim 1 recites a computer-implemented method for discovering fabric devices, comprising: receiving a list from a fabric driver of fabric devices available to a host system, wherein the fabric driver is part of an operating system for the host system; receiving a request to select a subset of the fabric devices from the list; and requesting the fabric driver to create an operating system device node in the host system for each of the fabric devices in the subset not already online, wherein each operating system device node provides a mechanism for accessing a corresponding one of the subset of fabric devices through the operating system executing on the host system. Clearly, claim 1 does not cover a law of nature, natural phenomena or abstract idea. There is nothing abstract about a computer-implemented method for discovering fabric devices that involves a fabric driver, operating system, fabric devices, host system, operating system device node, etc. These are all very concrete, useful and tangible elements that have a clear practical application in the arts. The list of fabric devices, a fabric driver, a host system and an operating system are all elements that limit the scope of the act of receiving a list to a very specific practical application. Claim 1 includes the further acts of receiving a request to select a subset of the fabric devices from the list, and requesting the fabric driver to create an operating system device node in the host system for each of the fabric

devices in the subset not already online, wherein each operating system device node provides a mechanism for accessing a corresponding one of the subset of fabric devices through the operating system executing on the host system. **Again, the language of the claim requires the acts of receiving a list, receiving a request, and requesting a fabric driver to be performed within a very specific practical context. The claim does not recite these acts in the abstract.** Therefore, the Examiner has failed to explain how claim 1 covers a law of nature, natural phenomena or abstract idea. According to the Guidelines cited by the Examiner, the "useful, concrete and tangible result" analysis **only applies if the Examiner has first established a _prima facie_ case that the claimed invention claimed invention covers a law of nature, natural phenomenon or abstract idea**. _See_ Guidelines IV.C.1. Since the Examiner has never explained how the invention of claim 1 covers a law of nature, natural phenomenon or abstract idea, **the Examiner has failed to state a proper rejection**.

Furthermore, the invention as recited in claim 1 is clearly for a practical application and clearly states a useful, concrete and tangible result. The Examiner has not explained how requesting a fabric driver to create an operating system device node in a host system for fabric devices would not be considered a practical application. In fact, it is ludicrous to view claim 1 as not reciting a practical application. Furthermore, claim 1 clearly recites a useful, concrete and tangible result. For example, the acts of receiving the specific list and specific requests recited in claim 1 result in a request being made to the fabric driver. **The act of the requesting recited in the computer-implemented method of claim 1 would inherently include such a request represented by tangible data within the computer (e.g. a program call or message). Thus, claim 1 clearly recites useful, concrete and tangible result. The Examiner has never rebutted this point.** As stated in the Guidelines at IV.C.2.b: "The claim must be Examiner to see if it includes anything more than a § 101 judicial exception [e.g., abstract idea]. If the claim is directed to a practical application of the § 101 judicial exception producing a result tied to the physical world ... **then the claim meets the statutory requirement of 35 U.S.C. § 101**." (emphasis added). A computer-implemented method that comprises requesting a fabric driver to create an operating system device node in a

09/842,495 (5181-79200/P5623)   3   Meyertons, Hood, Kivlin, Kowert & Goetzel, P.C.

PAGE 3/7 * RCVD AT 10/18/2006 9:09:39 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/36 * DNIS:2738300 * CSID:15128538801 * DURATION (mm-ss):02-22

host system for fabric devices is clearly directed to a practical application and clearly produces a result tied to the physical world. The implementations of fabric drivers and operating system and the data generating for communicating therewith is clearly tied to the physical world and is not just an abstract idea.

In regard to a useful, concrete and tangible result, the Examiner asserts on p. 2 of the Final Action requirements for "useful", "tangible", and "concrete". In regard to "useful", the Examiner states that the utility has to be (i) specific, (ii) substantial and (iii) credible. Claim 1 recites, in part, "requesting the fabric driver to create an operating system device node in the host system for each of the fabric devices in the subset not already online, wherein each operating system device node provides a mechanism for accessing a corresponding one of the subset of fabric devices through the operating system executing on the host system." Requesting a fabric driver to create an operating system device node in a host system is clearly a specific, substantial and credible utility. Applicants also note that the Examiner did not assert that the invention of claim 1 lacks utility.

In regard to "tangible", the Examiner states: "The tangible requirement does **not** necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials to a different state or thing." (emphasis added). Applicants agree with the Examiner as to what is **NOT** required by for "tangible". Moreover, the act of the requesting, recited in the computer-implemented method of claim 1, would inherently include such a request represented by tangible data within the computer (e.g. a program call or message). Applicants also note that the Examiner did not assert that the invention of claim 1 lacks tangibility.

In regard to "concrete", the Examiner states that the process must have a result that can be substantially repeatable or the process must substantially produce the same result again. The computer-implemented method of claim 1 is clearly repeatable and thus concrete. Applicants also note that the Examiner did not assert that the invention of claim 1 lacks concreteness.

The Examiner fails to rebut any of the specific arguments made above or in Applicants' previous response. The only attempt by the Examiner at any rebuttal to any of Applicants' arguments appears at the top of p. 3 of the Final Action where the Examiner states "a new representation of the series of numerical values is not a useful, tangible and concrete result." However, claim 1 does not recite "a new representation of the series of numerical values". **Thus, the Examiner's comment is irrelevant.** As shown above, the invention as recited in claim 1 is clearly a practical application and clearly produces a useful, concrete and tangible result.

Applicants refer the Examiner to *State Street Bank & Trust Co. v. Signature Financial Group, Inc.,* 149 F.3d 1368, 47 USPQ2d 1596 (Fed. Cir. 1998) where the court stated that the relevant claim was statutory because "the transformation of data, representing discrete dollar amounts, by a machine through a series of mathematical calculations into a final share price, constitutes a practical application ... because it produces 'a useful, concrete and tangible result' – a final share price". Just like the implicitly produced final share price in *State Street* was considered a useful, concrete and tangible result and thus statutory, requesting a fabric driver to create an operating system device node in a host system produces a useful, concrete and tangible result and is thus statutory. Note that the final share price was not even explicitly recited in the claim in *State Street.*

Applicants also refer the Examiner to *AT&T Corp. v. Excel Communications, Inc.,* 172 F.3d 1352, 50 USPQ2d 1447 (Fed. Cir. 19999). The claim in the *AT&T* case recites "generating a message record" and was held to be statutory. Applicant requests the Examiner to explain how claims that refer only to processing data in a computer system (as in *State Street*) or generating a message record (as in *AT&T*) meet the requirements of § 101 whereas Applicants' claim that requests a fabric driver to create an operating system device node in a host system does not meet the requirements of § 101.

Similar arguments as those given above in regard to claim 1 apply in regard to independent claims 4, 9, 43, 47, 52 and 67.

Furthermore, claim 4 recites, in part, "creating an operating system device node in the host system for each of the fabric devices in the selected subset not already online, wherein each operating system device node provides a mechanism for accessing a corresponding one of the subset of fabric devices through an operating system executing on the host system." The creating such an operating system device node is clearly a practical application and produces a useful, concrete and tangible result. **The Examiner has provided no specific reasoning in regard to this specific limitations of claim 4. Thus, the Examiner has failed to state a** *prima facie* **rejection in regard to claim 4.** A similar argument applies to independent claims 9, 47 and 52.

In regard to claims 43-59, the Examiner states that these claims recite a "digital signal medium". **The Examiner has misstated the language of the claims.** These claims actually recite a "computer readable storage medium" (emphasis added). Thus, the Examiner's rejection in regard to claims 43-59 is improper.

Allowed Claims:

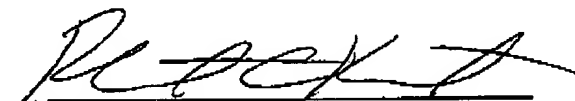Claims 23-30 and 32-42 are allowed.

CONCLUSION

Applicants submit the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-79200/RCK.

Also enclosed herewith are the following items:

☐ Return Receipt Postcard
☐ Petition for Extension of Time
☐ Notice of Change of Address
☐ Other:

Respectfully submitted,

Robert C. Kowert
Reg. No. 39,255
ATTORNEY FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8850

Date: _October 18, 2006_